A

HUSLI MOK

v.

SUPERINTENDENT OF LANDS & SURVEYS & ANOR

B

FEDERAL COURT, KUCHING
ZULKEFLI MAKINUDIN CJ (MALAYA)
SURIYADI HALIM OMAR FCJ
HASAN LAH FCJ
C ZALEHA ZAHARI FCJ
JEFFREY TAN FCJ
[CIVIL APPEAL NO: 01(i)-27-10-2012(Q)]
17 NOVEMBER 2014

D ***NATIVE LAW AND CUSTOM:*** *Land dispute - Customary rights over land - Alienation of land - Whether native's rights extinguished - Whether right to seek compensation accrued - Whether barred by limitation - Land Code (Sarawak) (Cap 81), ss. 15, 197 & 202*

E ***LIMITATION:*** *Land - Native customary rights land - Alienation of - Claim for compensation - Action filed after more than nine years - Whether commencement of action time barred - Land Code (Sarawak) (Cap 81), ss. 197 & 202*

WORDS AND PHRASES: *Meaning of - Land Code (Sarawak)*
F *(Cap 81), ss. 197, 202 - Whether clear and unambiguous - Whether to be given natural and ordinary meaning*

The appellant ('plaintiff'), the administrator of the estate of Mok bin Tuah ('the deceased'), claimed that, at all material times, the
G parcel of land containing an area of about 8.51 acres was the native customary rights ('NCR') land of the deceased. The land subsequently formed part of the estate of the deceased and devolved upon the plaintiff and his siblings as beneficiaries thereof. It was the plaintiff's case that sometime in 1987, the land was
H alienated by the respondents ('defendants') to Sarawak Economic Development Corporation ('SEDC') without extinguishment of the plaintiff's NCR over the land and without payment of compensation in contravention of the provision of s. 15 of the Land Code (Sarawak) (Cap 81) ('Land Code'). However, the
I defendants' raised a preliminary issue of law based on limitation under O. 33 r. 2 of the Rules of the High Court 1980. Upon determination of the preliminary issue, the High Court proceeded

to strike out the plaintiff's action. The Court of Appeal affirmed the decision of the High Court and took the view that the question for determination revolved around the construction of s. 202 of the Land Code, particularly as to the three-year limitation period prescribed therein. The Court of Appeal found that the plaintiff's cause of action accrued either in 1981, when the deceased's application for the land was refused or rejected, or in 1987, and the commencement of the action by the plaintiff was well beyond the three-year time bar prescribed in s. 202 of the Land Code. Leave was granted to the plaintiff by the Federal Court on the questions of law as follows: (i) whether the provisions of s. 202 of the Land Code applied to bar a claim for compensation for alleged loss of NCR over land resulting from alienation (without extinguishment of the NCR) of such State land to another party; and (ii) if the answer to question (i) was in the affirmative, and the claim for compensation was barred by limitation, would the court be entitled to dismiss the prayers for declarations sought in support of the claim for compensation.

Held (dismissing appeal with costs)
Per Zulkefli Makinudin CJ (Malaya) delivering the judgment of the court:

(1) Section 202 of the Land Code should be construed together with the preceding sections, more specifically ss. 197, 200 and 201 of the Land Code. Sections 202 and 197 are clear and unambiguous and hence must be given their natural and ordinary meaning. The word 'aforesaid' in s. 202 of the Land Code should be read conjunctively with s. 197 which would provide for the recovery of damages or compensation by any person who is deprived of his land. (paras 21 & 22)

(2) To interpret, by substituting the words 'any land' in s. 197 with the words 'land which is registered in the Land Register or any estate or interest therein', would be adding words to the section and amounted to asking the court to legislate by amending the section. This approach was not permissible. When the Legislature uses the words 'any land' in s. 197 of the Land Code, it must have intended to refer to all or any of the categories of 'land' as provided under the Land Code. (paras 22 - 24)

(3) The words 'any person' in s. 197 of the Land Code must be interpreted as not intending to restrict the application of that section only to those persons whose interests are registered in the Land Registers or 'registered proprietors' as provided in s. 113 of the Land Code. The words 'any person' must also apply to any native such as the plaintiff who has NCR and deemed to hold the land which is State land as licensee from the Government. To restrict the application of s. 197 of the Land Code to only 'registered land or registered interest in land' could result in an absurdity. (paras 24 & 25)

(4) Upon alienation of the land to SEDC, the rights of the deceased to the land had been extinguished or he had been deprived of the land and his right to seek compensation against the Government under s. 197 of the Land Code accrued. However, his action was barred by limitation as it was filed outside the period of limitation prescribed by s. 202 of the Land Code. The plaintiff commenced his action in the High Court some 15 years from 1981 or alternatively nine years from 1987. In either case, the commencement of action by the plaintiff was time barred and hence, question (i) was answered in the affirmative. (para 26)

(5) If the plaintiff's right to recovery of damages was barred by limitation, the declarations sought by the plaintiff were futile. The grant of declaration is at the discretion of the court. The court will not act in vain and grant declarations that are of no utility or in regard to matters which are no longer 'live issue' or had become academic. Once the plaintiff could not get out of the plea of limitation under s. 202 of the Land Code, the action ought to be dismissed, as the only issue left would be whether the court in the exercise of its discretionary powers should grant the plaintiff the declaratory orders sought. For this reason, question (ii) was answered in the affirmative. (paras 27 & 28)

Bahasa Malaysia *Translation Of Headnotes*

Perayu ('plaintif'), pentadbir harta pusaka Mok bin Tuah ('si mati'), menuntut bahawa, pada setiap masa material, tanah yang merangkumi kawasan sejumlah 8.51 ekar adalah tanah hak adat anak negeri ('HAAN') milik si mati. Tanah tersebut kemudiannya membentuk sebahagian harta pusaka si mati dan diserahkan kepada plaintif dan adik-beradiknya sebagai benefisiari. Adalah kes plaintif

bahawa pada sekitar tahun 1987, tanah tersebut telah dipindahkan oleh responden-responden ('defendan-defendan') kepada Sarawak Economic Development Corporation ('SEDC') tanpa penghapusan HAAN plaintif terhadap tanah tersebut dan tanpa bayaran pampasan bertentangan dengan peruntukan s. 15 Kanun Tanah (Sarawak) (Bab 81) ('Kanun Tanah'). Walau bagaimanapun, defendan-defendan membangkitkan isu awalan undang-undang berdasarkan had masa di bawah A. 33 k. 2 Kaedah-Kaedah Mahkamah Tinggi 1980. Selepas mempertimbangkan isu awalan tersebut, Mahkamah Tinggi meneruskan untuk membatalkan tindakan plaintif. Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi dan berpendapat bahawa persoalan untuk pertimbangan berkisar tentang pentafsiran s. 202 Kanun Tanah, khususnya berkaitan dengan had masa tiga tahun yang diperuntukkan. Mahkamah Rayuan mendapati bahawa kausa tindakan plaintif terakru sama ada dalam tahun 1981, apabila permohonan si mati untuk tanah tersebut dinafikan atau ditolak, atau dalam tahun 1987, dan permulaan tindakan oleh plaintiff adalah melampaui had masa tiga tahun yang diperuntukkan dalam s. 202 Kanun Tanah. Kebenaran diberikan kepada plaintif oleh Mahkamah Persekutuan atas persoalan-persoalan undang-undang seperti berikut: (i) sama ada peruntukan s. 202 Kanun Tanah terpakai untuk menghalang tuntutan bagi pampasan terhadap kehilangan HAAN terhadap tanah akibat daripada pemindahan (tanpa penghapusan HAAN) tanah Negeri kepada pihak yang lain; dan (ii) jika jawapan kepada soalan (i) adalah secara positif, dan tuntutan bagi pampasan dihalang oleh had masa, adakah mahkamah berhak menolak permohonan-permohonan bagi deklarasi-deklarasi yang menyokong tuntutan bagi pampasan.

Diputuskan (menolak rayuan dengan kos)
Oleh Zulkefli Makinudin HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Seksyen 202 Kanun Tanah sepatutnya ditafsir bersama dengan seksyen-seksyen sebelumnya, khususnya ss. 197, 200 dan 201 Kanun Tanah. Seksyen-seksyen 202 dan 197 adalah jelas dan oleh itu mesti diberikan maksud semulajadi dan biasa. Perkataan 'aforesaid' dalam s. 202 Kanun Tanah mesti dibaca secara konjungtif dengan s. 197 yang memperuntukkan bagi mendapatkan semula kerugian atau pampasan oleh mana-mana orang yang dilucutkan tanahnya.

(2) Untuk mentafsirkan, dengan menggantikan 'any land' dalam s. 197 dengan 'land which is registered in the Land Register or any estate or interest therein', akan bermaksud menambahkan perkataan-perkataan kepada seksyen tersebut dan bermaksud meminta mahkamah menggubal dengan meminda seksyen tersebut. Pendekatan ini tidak dibenarkan. Apabila perundangan menggunakan perkataan-perkataan 'any land' dalam s. 197 Kanun Tanah, ia mungkin telah dimaksudkan untuk merujuk kepada kesemua atau mana-mana kategori 'tanah' seperti yang diperuntukkan di bawah Kanun Tanah.

(3) Perkataan-perkataan 'any person' dalam s. 197 Kanun Tanah mesti ditafsir sebagai tidak berniat untuk menghalang seksyen tersebut hanya kepada sesiapa yang kepentingannya telah didaftarkan dalam Daftar Hakmilik atau 'pemilik berdaftar' seperti yang diperuntukkan dalam s. 113 Kanun Tanah. Perkataan-perkataan 'any person' sepatutnya terpakai kepada mana-mana anak negeri seperti plaintif yang memegang HAAN dan dianggap memegang tanah tersebut yang mana adalah tanah negeri sebagai pemegang lesen daripada Kerajaan. Untuk menyekat penggunaan s. 197 Kanun Tanah kepada hanya 'registered land or registered interest in land' boleh mengakibatkan kemusykilan.

(4) Selepas pemindahan tanah kepada SEDC, hak-hak si mati terhadap tanah tersebut telah lenyap dan dia telah dinafikan tanah tersebut dan haknya untuk memohon pampasan daripada Kerajaan di bawah s. 197 terakru. Walau bagaimanapun, tindakannya dihadkan oleh masa kerana ia difailkan di luar tempoh had masa yang diperuntukkan dalam s. 202 Kanun Tanah. Plaintif memulakan tindakannya di Mahkamah Tinggi kira-kira 15 tahun dari tahun 1981 atau secara alternatifnya, sembilan tahun dari tahun 1987. Dalam mana-mana kes, permulaan tindakan oleh plaintif adalah terhad oleh masa dan dengan itu, soalan (i) dijawab secara afirmatif.

(5) Jika hak plaintif untuk mendapatkan semula ganti rugi dihadkan masa, deklarasi-deklarasi yang dipohon oleh plaintif adalah sia-sia. Pemberian deklarasi adalah budi bicara mahkamah. Mahkamah tidak akan bertindak melulu dan memberikan deklarasi-deklarasi yang tidak berguna atau berkaitan dengan

perkara-perkara yang bukan lagi 'isu hidup' atau telah menjadi akademik. Sebaik sahaja plaintif tidak boleh keluar daripada pli had masa di bawah s. 202 Kanun Tanah, tindakan tersebut wajar ditolak, kerana satu-satunya isu yang tinggal adalah sama ada mahkamah, dalam melaksanakan kuasa budi bicaranya, wajar memberikan plaintif perintah-perintah deklarasi yang dipohon. Atas alasan ini, soalan (ii) dijawab secara afirmatif.

Case(s) referred to:

Douglas A Pedley v. Majlis Ugama Islam Pulau Pinang & Anor [1990] 2 CLJ 391; [1990] 2 CLJ (Rep) 24 HC ***(refd)***

NKM Holdings Sdn Bhd v. Pan Malaysia Wood Bhd [1986] 1 LNS 79 SC ***(refd)***

Legislation referred to:

Government Proceedings Act 1956, s. 29(b)

Land Code (Sarawak) (Cap 81), ss. 2, 5(2)(i), (3), (4), 15(1), 113, 114, 115, 132, 133, 134, 197, 200, 201, 202

Rules of the High Court 1980, O. 33 r. 2

For the appellant - Mekanda Singh Sandhu (Ronald Ong with him); M/s Sandhu & Co

For the 1st & 2nd respondents - JC Fong (Talaat Mahmood Abdul Rashid & Mohd Adzul Adzlan with him); State AG's Chambers

[Editor's note: For the Court of Appeal judgment, please see Husli @ Husly Mok v. Superintendent of Lands & Surveys & Anor [2012] 1 LNS 969.]

Reported by S Barathi

JUDGMENT

Zulkefli Makinudin CJ (Malaya):

Introduction

[1] This is an appeal by the appellant against the decision of the Court of Appeal in dismissing the appellant's appeal against the decision of the High Court at Miri. The High Court allowed the respondents' application under O. 33 r. 2 of the Rules of the High Court 1980 ("RHC 1980"), wherein after determining a preliminary issue of law based on limitation, proceeded to strike out the appellant's action. The appellant was the plaintiff while the respondents were the defendants before the High Court. For convenience the parties will be referred as they were before the High Court.

A **Leave To Appeal**

[2] Leave to appeal was granted by this court on the following two questions of law:

B (i) Whether the provisions of s. 202 of the Land Code of Sarawak ("Land Code") applied to bar a claim for compensation for alleged loss of native customary rights ("NCR") over land resulting from the alienation (without extinguishment of the NCR) of such state land to another party.

C (ii) If the answer to question (i) is in the affirmative, and the claim for compensation being barred by limitation, would the court be entitled to dismiss the prayers for declarations sought in support of the claim for compensation.

D **Background Facts**

[3] The plaintiff was the administrator of the estate of Mok bin Tuah ("deceased"). The plaintiff claimed that at all material times, that parcel of land, containing an area of about 8.51 acres E situated at Miri River, Miri forming part of Lots 1314, 1315 and 1351 to 1362, Block 3 Miri Concession Land District, was the native customary rights land ("the land") of the deceased. Upon the death of the deceased, the land formed part of the estate of the deceased and devolved upon the plaintiff and his siblings as F beneficiaries thereof.

[4] It was the plaintiff's case that sometime in 1987 the land was alienated by the defendants to Sarawak Economic Development Corporation ("SEDC") without extinguishment of the G appellant's NCR over the land and without payment of compensation in contravention of the provision of s. 15 of the Land Code. The plaintiff prayed for damages costs and other reliefs as the court thinks fit and just.

H **Findings Of The High Court On Preliminary Issues**

[5] By way of application of summons in chambers the defendants sought determination on two preliminary issues of law under O. 33 r. 2 of the RHC 1980 as follows:

I (a) Whether having regard to the fact that the plaintiff's right (if any) over the land claimed herein were lost by the alienation thereof to SEDC on 21 December 1987, and this action was

commenced in April 1996, the plaintiff's claim herein for declarations (a discretionary remedy) ought to be granted by the court?

(b) Whether the plaintiff's claim for damages is barred by virtue of s. 202 of the Land Code?

[6] The High Court allowed the defendants' summons in chambers and answered preliminary issue (b) above in the affirmative and struck out the plaintiff's action. The plaintiff thereafter appealed to the Court of Appeal against the decision of the High Court.

Findings Of The Court Of Appeal

[7] The Court of Appeal affirmed the decision of the High Court and took the view that the question for determination revolved around the construction of s. 202 of the Land Code, particularly as to the three-year limitation period prescribed therein. Section 202 of the Land Code reads:

> 202. Limitation of actions
>
> No action for recovery of damages as aforesaid shall lie or be sustained against the government unless the action is commenced within a period of three years from the date when the right to bring the action accrued:
>
> > Provided that any person under the disability of infancy or unsoundness of mind may bring such an action within three years from the date upon which the disability ceased.

[8] The Court of Appeal was of the view that the word "aforesaid" in s. 202 of the Land Code requires that s. 202 be read conjunctively with the preceding sections, more specifically ss. 197, 200 and 201 of the Land Code which provide for the recovery of damages or compensation by any person who is deprived of his land. Since the plaintiff's action and his pleaded case sought to recover damages or compensation on the ground that the deceased or the deceased's estate was deprived of the land, s. 202 of the Land Code clearly applied which prescribed a time bar of three years.

[9] On the facts, the Court of Appeal found that plaintiff's cause of action accrued either in 1981, when the deceased's application for the land was refused or rejected; or on 21 December 1987, when the plaintiff alleged that the alienation of the land to SEDC without extinguishment of the NCR of the deceased or the deceased's estate and without payment of compensation was in contravention of s. 15 of the Land Code. The plaintiff was reckoned to have commenced his action in the High Court in April 1996, some 15 years from 1981 or alternatively nine years from 1987. In either case, the Court of Appeal was of the view that the commencement of the action by the plaintiff was well beyond the three-year time bar prescribed in s. 202 of the Land Code.

[10] As regards the prayers for the declarations sought in support of the plaintiff's claim for compensation the Court of Appeal found that these declarations were apparently weak in the sense that they lack enforceability and there could be no committal. These declarations read conjunctively with other prayers for recovery of damages came within the provision of s. 202 of the Land Code.

Submissions Of The Plaintiff

[11] Learned counsel for the plaintiff submitted that both the High Court and the Court of Appeal committed serious errors in law in arriving at the conclusion that any claim for recovery of compensation for deprivation of land was caught by limitation without ascertaining the true object of s. 202 of the Land Code and the type of action for recovery of damages for loss of land at which it is directed.

[12] It was the contention of the plaintiff that applying the purposive approach to interpret s. 202 of the Land Code to ascertain the compensation claim that was caught by the words "... action for recovery of damages as aforesaid ...", it was necessary to examine the six sections preceding s. 202, namely ss. 197 to 201 which together with s. 202 come under the subheading "Compensation For Loss" of Part VII of the Land Code on "Registration". These statutory provisions under ss. 197 to 202 of the Land Code all relate to or are connected to the matter of compensation for deprivation of land or an estate or interest therein arising from conferment of indefeasibility of title by the process of registration.

[13] It was highlighted by learned counsel for the plaintiff that s. 197 of the Land Code provides that the action for recovery of damages must be by a person who is: (a) deprived of the land by reason of the provisions relating to indefeasibility under ss. 132, 133 and 134; and (b) barred by reason of these provisions from bringing an action for recovery of the land against the registered proprietor. Section 197 of the Land Code provides as follows:

> 197. Any person who is deprived of any land, or of any estate or interest therein, by reason of any of the provisions relating to indefeasibility contained in ss. 132, 133 and 134 and who is by reason thereof barred from bringing an action against the registered proprietor for possession, or other action for the recovery of that land, estate or interest, may bring an action against the government for recovery of damages.

[14] It was submitted for the plaintiff that the purpose of s. 197 of the Land Code is to provide recourse against the government for recovery of damages to a limited class or group of persons. The person who belongs to it must firstly, have suffered loss of his land or an estate or interest therein by "... reason of the provisions relating to indefeasibility ...", that is to say, the registration process conferring indefeasibility of title and secondly, he is barred from recovering such loss against the registered proprietor who acquires the indefeasible title.

[15] It was the plaintiffs case that the limitation bar set by s. 202 of the Land Code by the words aforesaid is only for limiting action against the government for recovery of damages by any person arising from provisions relating to indefeasibility as spelt out under s. 197 of the Land Code and it did not apply to the plaintiff in the present case. This was because the plaintiffs claim for loss and damages related to issues relating to NCR lands under ss. 5(3) and (4) of the Land Code which were not titled land. Learned counsel for the plaintiff in support of this proposition of the law cited the unreported case of *Jeno Jo and 2 Ors v. The State Government of Sarawak* (High Court Suit No. 22-14-2003 (BTU)). In that case, the court considered the preceding ss. 197 to 201 of the Land Code together with marginal notes and the general headings included in Part VII: Registration under the sub-part Compensation For Loss and came to the conclusion that s. 202 of the Land Code did not apply to the claim for loss and damage connected to extinguishment of NCR. His Lordship John Ko Wai Seng JC said at p. 60 of the judgment:

> The court agrees with submission of learned counsel for the plaintiffs that the limitation bar set by s. 202 of the Code by the words 'as aforesaid' is for limiting all 'action against the government for recovery of damages' against the defendant arising from s. 197 of the same sub-part of the Code during the process of registration of titled land under Part VII. The plaintiffs' claims for loss and damages connected to issues arising from ss. 5(3) and (4) of the Code which are not titled are not meant to be subject to the limitation bar of s. 202 of the Code which is for regulating 'recovery of damages' made under s. 197 of the same sub-part of the Code arising from registration process at the Land Office.

[16] It was also contended for the plaintiff that the interpretation given by the Court of Appeal on the application of s. 202 of the Land Code was wrong because it would produce an unjust and absurd result. It had the effect of denying to a person entitled to native customary rights subsisting in state land the right to enforce the protection accorded by s. 15(1) of the Land Code which provides as follows:

> 15. Protection of native customary rights
>
> (1) Without prejudice to ss. 18 and 18A, where native customary rights have been lawfully created over state land, such land shall not be alienated or be used for a public purpose until all native customary rights have been surrendered or terminated or provision for compensating the person entitled thereto have been made.

Section 15(1) of the Land Code reinforces the legislative intent to protect native customary rights contained in the section by prohibiting alienation of state land until all native customary rights have been surrendered or terminated or provision for compensating the person entitled thereto had been made. It was submitted for the appellant that by the above statutory provision, the legislature has clearly intended that there can be no alienation of state land, in which native customary rights subsist, unless there is an extinguishment of such rights in accordance with the procedure as laid out and provision is made for payment of compensation.

[17] It was the contention of the plaintiff on the factual situation upon which the first question posed for determination by this court was premised, it was to be taken as established that the alienation of the state land to SEDC was made without extinguishment of NCR. There was no extinguishment of NCR by

way of a direction of the minister and no payment of compensation to the estate of the deceased. The above alienation of the state land was open to challenge on the ground that it was *ultra vires* s. 15(1) read with s. 5(3) of the Land Code. Being a nullity, the alienation conferred no rights upon SEDC and it therefore did not affect the plaintiffs entitlement to native customary rights over the land. The plaintiff had the right to ignore it or to apply for it to be set aside. The action taken by the plaintiff in the instant case to claim for declarations to challenge the validity of the alienation and for damages as a consequential relief was therefore clearly outside the ambit of s. 202 of the Land Code.

[18] On the second question posed before this court it was submitted for the plaintiff that the Court of Appeal was wrong in taking the view that the claims for declarations were also caught by the limitation period under s. 202 of the Land Code. It was the plaintiffs contention that the Court of Appeal erred in law in striking out the action without determining the claims for declarations prayed for. The plaintiff was left with no recourse except to claim for declarations to establish his native customary rights over the land in question and to determine that the alienation of the land to SEDC was a wrongful infringement of such rights by the government. This was because the remedy of filing an action for an order for recovery of the land was not available to them.

[19] Learned counsel for the plaintiff contended that under proviso (b) of s. 29 of the Government Proceedings Act 1956 the court can only make a declaratory order as against the government *in lieu* of an order for recovery of the property. Therefore, on the facts of the instant case, the declarations served a useful purpose and should not have been dismissed even if the claim for compensation were barred by limitation.

[20] It was also submitted that it was incumbent upon the plaintiff to establish that his deceased father had native customary rights under s. 15(1) of the Land Code and the essential pre-requisite for extinguishment of the rights and the payment of compensation was that the "native customary rights shall have been lawfully created" in the state land. Therefore, there must be a determination by the court that the native customary rights had been lawfully created. In the said premises, it was the plaintiffs contention that the declarations prayed for were not purely

A academic. On the facts and circumstances of this case, they were necessary to establish the plaintiffs rights over the land and to determine the legality of the alienation of the land to SEDC.

Decision

B **[21]** We shall first deal with question (i) posed in this appeal. It is our considered view the Court of Appeal was right in holding that s. 202 of the Land Code should be construed together with the preceding sections, more specifically ss. 197, 200 and 201 of the Land Code. Of particular importance in our present case is
C s. 197. Both ss. 202 and 197 of the Land Code in our view are clear and unambiguous. Therefore, the two sections must be given their natural and ordinary meaning.

[22] We are in agreement with the finding of the Court of Appeal
D that the word "aforesaid" in s. 202 of the Land Code should be read conjunctively with s. 197 which would provide for the recovery of damages or compensation by any person who is deprived of his land. The plaintiff on the other hand wanted the court in its interpretation to substitute the words "any land" in
E s. 197 with the words "land which is registered in the Land Register or any estate or interest therein". To do so in our view would be adding words to the section and amounted to asking the court to legislate by amending the section. This approach is not permissible. (See the case of *NKM Holdings Sdn Bhd v. Pan*
F *Malaysia Wood Bhd* [1986] 1 LNS 79; [1987] 1 MLJ 39).

[23] It is to be noted under the Land Code, "land" includes (a) state land, as defined in s. 2 of the Land Code, (b) land issued with title by way of grant or lease or provisional lease, registered
G under the provisions of ss. 113, 114 and 115 of the Land Code, and (c) land held by natives under NCR created under s. 5 and until a document of title issued, the natives who lawfully occupy such land (which remains state land) are deemed to hold the same by licence from the government. (See s. 5(2) proviso (i) of the
H Land Code).

[24] We are of the view when the legislaturec uses the words "any land" in s. 197 of the Land Code, it must have intended to refer to all or any of the category of land stated above. For the
I words "any person" in s. 197 of the Land Code it must be interpreted it does not intend to restrict the application of that section only to those persons whose interests are registered in the

Land Registers or "registered proprietors" as provided in s. 113 of the Land Code. The words "any person" must also apply to any native such as the plaintiff who has native customary rights and deemed to hold the land which is state land as licensee from the government.

[25] We are also of the view to restrict the application of s. 197 of the Land Code to only "registered land or registered interest in land" could result in an absurdity. It would then appear that NCR land owners without titles to their land cannot institute an action for recovery of compensation against the government if they were deprived of their NCR land. With respect that could not have been the intention of the legislature.

[26] The basis of the plaintiff's complaint is that the deceased's NCR land had been amalgamated with other land, subdivided and then, the subdivided lots which included the deceased's NCR land alienated to SEDC. The plaintiff was right in contending that the alienation of the land to SEDC was unlawful as no compensation was paid by the government under s. 15 of the Land Code wherein the deceased or his estate suffered loss and damage. We are of the view upon alienation of the land to SEDC the rights of the deceased to the land had been extinguished or he had been deprived of the land and his right to seek compensation against the government under s. 197 of the Land Code accrued. His action however was barred by limitation as it was filed outside the period of limitation prescribed by s. 202 of the Land Code. On this point we agree with the finding of the Court of Appeal that the plaintiff commenced his action in the High Court in April 1996, some 15 years from 1981 (the year the deceased's application for the land was rejected) or alternatively nine years from 1987 (the year the land was alienated to SEDC without extinguishment of the NCR). In either case the commencement of action by the plaintiff was time barred. We would therefore answer question (i) posed in this appeal in the affirmative.

[27] We shall now deal with question (ii) posed in this appeal. We are of the view if question (i) is answered in the affirmative and the plaintiff's right to recovery of damages barred by limitation, the declarations sought by the plaintiff were futile. The grant of declaration is in the discretion of the court. The court will not act in vain and grant declarations that are of no utility or in regard to matters which are no longer "live issue" or has become academic.

A In support of this proposition we would refer to the following passage of the judgment of Wan Adnan J (as he then was) in *Douglas A Pedley v. Majlis Ugama Islam Pulau Pinang & Anor* [1990] 2 CLJ 391; [1990] 2 CLJ (Rep) 24 at p. 26; [1990] 2 MLJ 307 at p. 308 as follows:

B

> The power of the court to make a declaratory judgment is discretionary. The court will not make a declaratory judgment when the question raised is purely academic. The court should not be required "to answer academic question" – *Howard v. Pickford Tools Ltd* [1951] 1 KB 417. Although the remedy by way of
C declaration is wide and flexible yet it will not be granted to a plaintiff whose claim is too indirect and unsubstantial and would not give him 'relief' in any real sense, that is relieve him of any liability or disadvantage or difficulty: *Thorne Rural District Council v. Bunting* [1972] 1 All ER 439.

D

[28] Accordingly we are of the view the Court of Appeal was right in upholding the decision of the High Court that once the plaintiff cannot get out of the plea of limitation under s. 202 of the Land Code, the action ought to be dismissed, as the only
E issue left would be whether the court in the exercise of its discretionary powers should grant the appellant the declaratory orders sought. For this reason question (ii) posed in this appeal is answered in the affirmative.

Conclusion

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[29] For the reasons above stated we find there is no merit in this appeal. The appeal is therefore dismissed with costs.

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